

Figure 2: Wastewater Facilities

ITEM No. 15
SUP. DOC. 3San Diego Office
3500 Fifth Ave., Suite 308
San Diego, California 92103TEL 619 209-5830
FAX 619 209-5835
www.tnccalifornia.org

October 25, 2002

Mr. Bryan Ott
State of California
Regional Water Quality Control Board
9174 Sky Park Court, #100
San Diego, CA 92123

Re: Cuyamaca Recreation District Leach Field

Dear Bryan:

Thank you for your inquiry about The Nature Conservancy's discussions with the Tulloch family and the Cuyamaca Recreation District (District) regarding the proposed Cuyamaca leach field.

In January of 2002, TNC purchased 2,080-acres of Rancho Cuyamaca (Ranch) from the Tulloch family. During TNC's negotiations with the family, we expressed interest in purchasing the entire Tulloch ownership (2,117 acres), including the 37 acres now owned by the District. The family subsequently chose to sell the 37-acre "carve out" portion to the District for use as a leach field and to sell the remaining 2,080-acres to TNC. Included in the portion sold to TNC was a five-acre portion that has been used by the District for many years to discharge its sewerage effluent via spraying. This spraying has taken place under a permit with the California Regional Water Quality Control Board, Region 7. Realizing the District had no immediately available alternative to spraying, our purchase agreement included a clause allowing the District to continue spraying for 18 months after closing with appropriate indemnification provisions.

During our negotiations, we expressed numerous concerns with the use of the 37-acre carve out portion of the Ranch as a leach field or other uses incompatible with the preservation of the Ranch and the reservoir. These included:

1. The District's proposed boundary would bisect the Ranch which would limit the ability to comprehensively manage the Ranch for conservation purposes;
2. The leach field design, especially the proposed upper tank, could allow contaminants to seep onto the Ranch and into the reservoir;
3. The uncertainty of future impacts to the Ranch due to fencing or other uses that could compromise the conservation values of the Ranch; and
4. The availability of viable alternatives to the leach field, in particular, State Parks offer to allow the District to join in the Boy Scout Camp leach field¹.

¹ State Parks will be renovating the existing leach field and could expand its capacity to include the volume generated by the District. In a discussion on October 8, 2002 with Parks Superintendent Dave Van Cleve, he indicated again that while Parks would prefer that the District's effluent be disposed of off site, the District would still be welcome to join in a renovation of the field in exchange for using it to dispose their effluent.

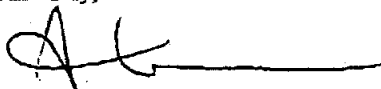
Mr. Brian Ott
Page 2
October 25, 2002

Once it became clear that the family was going to sell the 37 acres to the District, we proposed to the District that it adopt a conservation easement on the property to protect the conservation values in a manner consistent with the remainder of the Ranch. According to District General Manager Hugh Marx, his Board was not willing to accept any restrictions on the use of the property, nor would it partner with State Parks on a shared field.

As you may know, TNC used a loan from the State Water Resources Control Board's Revolving loan fund to purchase the Ranch. The purpose of this loan program is to protect water quality resources. Placement of a leach field upstream of the reservoir and upslope of critical aquatic ranch resources when a viable alternative currently exists downstream of the reservoir appears inconsistent with protection of the water resource.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to be 'A. Van Leer', followed by a horizontal line.

Ann Van Leer
Project Director, San Diego
The Nature Conservancy



ITEM No. 15
SUP. DOC. 4

DEPARTMENT OF CONSERVATION
STATE OF CALIFORNIA

July 1, 2002

**DIVISION OF
LAND RESOURCE
PROTECTION**

■ ■ ■

801 K STREET
SACRAMENTO
CALIFORNIA
95814

PHONE
916/324-0850

FAX
916/327-2430

TDD
916/324-2858

INTERNET
conserv.ca.gov

■ ■ ■

GRAY DAVIS
GOVERNOR

Mr. Hugh Marx, General Manager
Lake Cuyamaca Recreation and Park District
15027 Highway 79
Julian, CA 92036

Subject: Public Agency Acquisition of Land Enrolled in Williamson Act
Contract (APN 294-030-02 or 294-030-09)

Dear Mr. Marx:

Thank you for your letter of May 7, 2002, notifying the Department of Conservation (Department) of the acquisition by the Lake Cuyamaca Recreation and Park District (District) of approximately 38 acres of land enforceably restricted by Williamson Act contract. Please note that the Department did not receive the letter until June 5. The purpose of the acquisition was to construct a park septic system.

According to the letter, the District was not aware that the property was encumbered by a Williamson Act contract and was not aware of its statutory notification requirement. However, the title report provided as an attachment to the letter lists "terms, conditions and restrictions" within an agricultural preserve as Item #21.

It is the policy of the State (Government Code §51292) that public agencies cannot locate public improvements in agricultural preserves unless the following specific findings can be made:

- "The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve (§51292(a))."
- "If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement (§51292(b))."

The District does not address either finding in its letter or the documentation attached. The letter does state that the search for a location began in 1986. However, the letter also states that the District has been discharging its effluent on an adjacent property that was just purchased by the Nature Conservancy, and that the District therefore needed an immediate, alternate location. According to the letter, this

Mr. Hugh Marx
July 1, 2002
Page 2 of 3

adjacent property may also be under contract. Please take note that the Department considers effluent discharge to be an incompatible use under the Act.

As an attachment to the letter, the District has submitted selected Board Meeting minutes since 1985 containing brief entries regarding sewage disposal. Although the documents reference aspects of a project and alternative locations being considered, they do not present a cohesive explanation of the site selection process and do not address the required findings for acquisition of Williamson Act land. Based on information provided, it does not appear that the findings can be made.

A Williamson Act contract is an enforceable restriction pursuant to Article XIII, §8 of the California Constitution and §51252. Public agency acquisition of Williamson Act land must meet requirements for acquisition by eminent domain or in lieu of eminent domain in order to void the contract pursuant to §51296. The letter and attached documentation do not address these requirements. Based on the information provided, it does not appear that the requirements have been met. Apparently, then, the contract will remain in force and continue to restrict use of the land.

According to an attached Negative Declaration, the District determined that the project was exempt from CEQA. Among the reasons cited was section 15323, "... normal operations of existing facilities for public gatherings for which the facilities were designed, where there is a past history of the facility being used for the same or similar kind of purpose" Notwithstanding an explanation of the kind of public gatherings involved, construction of a new leach field on a newly acquired property for such purpose to replace surface disposal on a different property does not appear to qualify as an existing facility.

The District also cites section 15061(b)(3), without explanation, as a reason for exempt status: "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." The project appears to remove 38 acres from agricultural or open space use, or to establish an incompatible use according to contract restrictions. It terminates or threatens to terminate an enforceable contract established by law for the protection and preservation of agricultural land. Therefore, the Department does not concur that it can be seen with certainty that there is no possibility that the project may have a significant effect. We recommend that the District conduct an Initial Study to determine whether an Environmental Impact Report or Mitigated Negative Declaration is the appropriate method of meeting CEQA requirements.

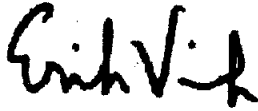
On April 24, 2002, the Department sent the District a list of items of information needed as part of proper notification of public acquisition of Williamson Act land. We enclose that same list. The Department requests that the District submit the information listed, in particular, explanation and documentation of how the findings have been made, how the

Mr. Hugh Marx
July 1, 2002
Page 3 of 3

requirements for acquisition by eminent domain or in lieu of eminent domain have been met and a copy of the subject Williamson Act contract.

Please be aware that if the determination is made to not locate the proposed public improvement on the subject property, before returning the land to private ownership, the Department must be notified. The land shall be reenrolled in a new contract or encumbered by an enforceable restriction at least as restrictive as that provided by the Williamson Act (§51295). If you have any questions, please contact Bob Blanford, Research Analyst, at (918) 627-2145.

Sincerely,

3


Erik Vink
Assistant Director

Enclosure

ACQUISITION NOTIFICATION PROVISIONS OF THE WILLIAMSON ACT

Notification provisions of the Williamson Act (Government Code Section 51291) require an agency to notify the Director of the Department of Conservation of the possible acquisition of Williamson Act contracted land for a public improvement. Such notification must occur when it appears that land enrolled in a Williamson Act contract may be required for a public use, is acquired, the original public improvement for the acquisition is changed, or the land acquired is not used for the public improvement. The local governing body responsible for the administration of the agricultural preserve must also be notified.

NOTIFICATION (Government Code Section 51291 (b))

The following information must be included in the notification correspondence.

1. The total number of acres of Williamson Act contracted land to be acquired and whether the land is considered prime agricultural land according to Government Code Section 51201.
2. The purpose for the acquisition and why the land was identified for acquisition. (If available, include documentation of eminent domain proceedings or a property appraisal and written offer in lieu of eminent domain per GC §§7267.1 and 7267.2 to void the contract per GC §51295; Include a chronology of steps taken or planned to effect acquisition by eminent domain or in lieu of eminent domain.)
3. A description of where the parcel(s) is located.
4. Characteristics of adjacent land (urban development, Williamson Act, noncontract agricultural, etc.)
5. A vicinity map and a location map (may be the same as #8).
6. A copy of the contract(s) covering the land.
7. CEQA documents for the project.
8. The findings required under GC §51292, documentation to support the findings and an explanation of the preliminary consideration of §51292. (Include a map of the proposed site and an area of surrounding land identified by characteristics and large enough to help clarify that no other, noncontract land is reasonably feasible for the public improvement.)

ACQUISITION (Government Code Section 51291 (c))

The following information must be included in the notification when land within an agricultural preserve has been acquired. The notice must be forwarded to the Director within 10 working days of the acquisition of the land. The notice must also include the following:

1. A general explanation of the decision to acquire the land, and why noncontracted land is not available for the public improvement.
2. Findings made pursuant to Government Code Section 51292, as amended.
3. If the information is different from that provided in the previous notice sent upon consideration of the land, a general description of the land, and a copy of the contract covering the land shall be included in the notice.

SIGNIFICANT CHANGE IN PUBLIC IMPROVEMENT (Government Code Section 51291 (d))

Once notice is given as required, if the public agency proposed any significant change in the public improvement, the Director must be notified of the changes before the project is completed.

LAND ACQUIRED IS NOT USED FOR PUBLIC IMPROVEMENT (Government Code Section 51295)

If the acquiring public agency does not use the land for the stated public improvement and plans to return it to private ownership, before returning the land to private ownership the Director must be notified of the action. Additional requirements apply. The mailing address for the Director is: Darryl Young, Director, Department of Conservation, 801 K Street, MS 13-71, Sacramento, CA 95814.

April 2002

ITEM No. 15
SUP. Doc. 5

February 6, 2002

NATURE CONSERVANCY PURCHASES 2,100-ACRE RANCHO CUYAMACA

SAN DIEGO.-The Nature Conservancy of California announced today its recent purchase of a historic ranch on the northern edge of the Cuyamaca Reservoir. By protecting the biologically important ranch from development, the Conservancy is also helping safeguard the region's water supply.

Known both as Rancho Cuyamaca and the Tulloch Ranch, the approximately 2,100-acre property features unusually diverse wildlife habitats that are home to mountain lions, golden eagles, bobcats, deer, the California spotted owl, and rare and sensitive plants.

Rancho Cuyamaca contains the important watershed that feeds Cuyamaca Reservoir. Cuyamaca Reservoir serves residents of the cities of La Mesa, El Cajon, Lemon Grove and parts of the unincorporated area. Releases from the reservoir flow down Boulder Creek to the San Diego River and onward to El Capitan Reservoir, a major source of drinking water for the City of San Diego.

"Putting the ranch under conservation management, as The Nature Conservancy will do, will protect the watershed from degradation and enhance the chances that San Diegans in the future will continue to live in an area rich in wildlife and natural open spaces," stated San Diego County Project Director Ann Van Leer.

Much of the conservation value of Rancho Cuyamaca derives from its high-quality aquatic resources, including freshwater seeps, wetlands, vernal pools, intermittent streams, and montane wet meadows. Because of the critical need to protect drinking water sources, The Nature Conservancy received a loan from the State Water Resources Control

Board (SWRCB) to acquire the property. The transaction closed on January 16, 2002.

"This key purchase provides a myriad of natural resource benefits, including watershed protection," said SWRCB Chair Art Baggett. "The Board is glad we could help The Nature Conservancy make this purchase."

"San Diegans place a high value on fresh water and the protection of our natural areas," said Van Leer. "We very much appreciate the State Water Resources Control Board's help in this transaction."

Rancho Cuyamaca also occupies a strategic location in a growing network of protected open spaces in San Diego County's backcountry. The ranch is six miles south of the community of Julian and close to Cuyamaca Rancho State Park, which abuts the south shore of Cuyamaca Reservoir. It is adjacent to the Lucky Five Ranch, which adjoins Cuyamaca Rancho and Anza Borrego State Parks. The private Anza Borrego Foundation recently purchased about two-thirds of the Lucky Five Ranch and resold it to the California Department of Parks and Recreation for inclusion in the state park system.

Rancho Cuyamaca has been used as a cattle ranch throughout much of its history. George Sawday, Great Grandfather of Margaret Alice Tulloch, purchased the property in 1943. It has been held in the family since then and used as a cattle ranch.

Rancho Cuyamaca was a high-priority acquisition of The Nature Conservancy's San Diego County Project. The Nature Conservancy has preserved more than 13,000 acres of important wild lands in San Diego County.